

ASSEMBLY BILL

No. 2671

Introduced by Assembly Member Pacheco

February 20, 2004

An act to amend Section 4406 of the Commercial Code, relating to commercial law.

LEGISLATIVE COUNSEL'S DIGEST

AB 2671, as introduced, Pacheco. Commercial law: banking transactions.

Existing commercial law requires a depository institution to provide periodic account statements to its customers and requires that the depository institution either return or make available items paid from the account or provide information in the statement sufficient to allow the customer reasonably to identify the items paid. Until January 1, 2005, the listing of the item number, the amount, and the date the item was paid is sufficient to identify the items paid. This provision on describing items will cease to be operative on January 1, 2005.

This bill would extend the operation of that provision until January 1, 2010.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4406 of the Commercial Code, as
2 amended by Section 1 of Chapter 122 of the Statutes of 2000, is
3 amended to read:

1 4406. (a) A bank that sends or makes available to a customer
2 a statement of account showing payment of items for the account
3 shall either return or make available to the customer the items paid
4 or provide information in the statement of account sufficient to
5 allow the customer reasonably to identify the items paid. The
6 statement of account provides sufficient information if the item is
7 described by item number, amount, and date of payment. If the
8 bank does not return the items, it shall provide in the statement of
9 account the telephone number that the customer may call to
10 request an item or a legible copy thereof pursuant to subdivision
11 (b).

12 (b) If the items are not returned to the customer, the person
13 retaining the items shall either retain the items or, if the items are
14 destroyed, maintain the capacity to furnish legible copies of the
15 items until the expiration of seven years after receipt of the items.
16 A customer may request an item from the bank that paid the item,
17 and that bank shall provide in a reasonable time either the item or,
18 if the item has been destroyed or is not otherwise obtainable, a
19 legible copy of the item. A bank shall provide, upon request and
20 without charge to the customer, at least two items or a legible copy
21 thereof with respect to each statement of account sent to the
22 customer.

23 (c) If a bank sends or makes available a statement of account
24 or items pursuant to subdivision (a), the customer shall exercise
25 reasonable promptness in examining the statement or the items to
26 determine whether any payment was not authorized because of an
27 alteration of an item or because a purported signature by or on
28 behalf of the customer was not authorized. If, based on the
29 statement or items provided, the customer should reasonably have
30 discovered the unauthorized payment, the customer shall
31 promptly notify the bank of the relevant facts.

32 (d) If the bank proves that the customer failed, with respect to
33 an item, to comply with the duties imposed on the customer by
34 subdivision (c), the customer is precluded from asserting any of
35 the following against the bank:

36 (1) The customer's unauthorized signature or any alteration on
37 the item if the bank also proves that it suffered a loss by reason of
38 the failure.

39 (2) The customer's unauthorized signature or alteration by the
40 same wrongdoer on any other item paid in good faith by the bank

1 if the payment was made before the bank received notice from the
2 customer of the unauthorized signature or alteration and after the
3 customer had been afforded a reasonable period of time, not
4 exceeding 30 days, in which to examine the item or statement of
5 account and notify the bank.

6 (e) If subdivision (d) applies and the customer proves that the
7 bank failed to exercise ordinary care in paying the item and that the
8 failure contributed to loss, the loss is allocated between the
9 customer precluded and the bank asserting the preclusion
10 according to the extent to which the failure of the customer to
11 comply with subdivision (c) and the failure of the bank to exercise
12 ordinary care contributed to the loss. If the customer proves that
13 the bank did not pay the item in good faith, the preclusion under
14 subdivision (d) does not apply.

15 (f) Without regard to care or lack of care of either the customer
16 or the bank, a customer who does not within one year after the
17 statement or items are made available to the customer (subdivision
18 (a)) discover and report the customer's unauthorized signature on
19 or any alteration on the item is precluded from asserting against the
20 bank the unauthorized signature or alteration. If there is a
21 preclusion under this subdivision, the payer bank may not recover
22 for breach of warranty under Section 4208 with respect to the
23 unauthorized signature or alteration to which the preclusion
24 applies.

25 (g) This section shall remain in effect only until January 1,
26 ~~2005~~ 2010, and as of that date is repealed, unless a later enacted
27 statute, which is enacted before January 1, ~~2005~~ 2010, deletes or
28 extends that date.

29 SEC. 2. Section 4406 of the Commercial Code, as amended
30 by Section 2 of Chapter 122 of the Statutes of 2000, is amended
31 to read:

32 4406. (a) A bank that sends or makes available to a customer
33 a statement of account showing payment of items for the account
34 shall either return or make available to the customer the items paid
35 or provide information in the statement of account sufficient to
36 allow the customer to identify the items paid. If the bank does not
37 return the items, it shall provide in the statement of account the
38 telephone number that the customer may call to request an item or
39 a legible copy thereof pursuant to subdivision (b).

1 (b) If the items are not returned to the customer, the person
2 retaining the items shall either retain the items or, if the items are
3 destroyed, maintain the capacity to furnish legible copies of the
4 items until the expiration of seven years after receipt of the items.
5 A customer may request an item from the bank that paid the item,
6 and that bank shall provide in a reasonable time either the item or,
7 if the item has been destroyed or is not otherwise obtainable, a
8 legible copy of the item. A bank shall provide, upon request and
9 without charge to the customer, at least two items or a legible copy
10 thereof with respect to each statement of account sent to the
11 customer.

12 (c) If a bank sends or makes available a statement of account
13 or items pursuant to subdivision (a), the customer shall exercise
14 reasonable promptness in examining the statement or the items to
15 determine whether any payment was not authorized because of an
16 alteration of an item or because a purported signature by or on
17 behalf of the customer was not authorized. If, based on the
18 statement or items provided, the customer should reasonably have
19 discovered the unauthorized payment, the customer shall
20 promptly notify the bank of the relevant facts.

21 (d) If the bank proves that the customer failed, with respect to
22 an item, to comply with the duties imposed on the customer by
23 subdivision (c), the customer is precluded from asserting any of
24 the following against the bank:

25 (1) The customer's unauthorized signature or any alteration on
26 the item if the bank also proves that it suffered a loss by reason of
27 the failure.

28 (2) The customer's unauthorized signature or alteration by the
29 same wrongdoer on any other item paid in good faith by the bank
30 if the payment was made before the bank received notice from the
31 customer of the unauthorized signature or alteration and after the
32 customer had been afforded a reasonable period of time, not
33 exceeding 30 days, in which to examine the item or statement of
34 account and notify the bank.

35 (e) If subdivision (d) applies and the customer proves that the
36 bank failed to exercise ordinary care in paying the item and that the
37 failure contributed to loss, the loss is allocated between the
38 customer precluded and the bank asserting the preclusion
39 according to the extent to which the failure of the customer to
40 comply with subdivision (c) and the failure of the bank to exercise



1 ordinary care contributed to the loss. If the customer proves that
2 the bank did not pay the item in good faith, the preclusion under
3 subdivision (d) does not apply.

4 (f) Without regard to care or lack of care of either the customer
5 or the bank, a customer who does not within one year after the
6 statement or items are made available to the customer (subdivision
7 (a)) discover and report the customer's unauthorized signature on
8 or any alteration on the item is precluded from asserting against the
9 bank the unauthorized signature or alteration. If there is a
10 preclusion under this subdivision, the payer bank may not recover
11 for breach of warranty under Section 4208 with respect to the
12 unauthorized signature or alteration to which the preclusion
13 applies.

14 (g) This section shall become operative on January 1, ~~2005~~
15 2010.

